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ENDORSED

December 7, 2007

BY HAND

Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

*Complaint adjourned
from December 14 to
January 4 at 11:45 a.m.
Joint letter due
five days before.
SO ORDERED
USDJ
12-18-07*

Re: Garnett Small v. City of New York, et al., 07 Civ. 9631 (PKC)

Your Honor:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to the above-referenced case representing defendants City of New York ("City") and New York City Police Department Commissioner Raymond Kelly ("Kelly"). I write with respect to the above-referenced matter in which plaintiff alleges that defendants falsely arrested and maliciously prosecuted him. Defendants City and Kelly respectfully request an adjournment of the Initial Conference scheduled for December 14, 2007 at 11:00 a.m. and an extension of time to file the joint letter required by Your Honor's November 2, 2007 Scheduling Order. Plaintiff's counsel consents to these requests.

Defendants City and Kelly request an adjournment of the conference as defendants are still engaged in the preliminary investigation stages of this matter. By plaintiff's waiver of service executed by defendants City and Kelly, defendants City and Kelly presently have until December 31, 2007 to answer or otherwise respond to the complaint. As it is our understanding that the records of the underlying criminal action, including police records, may have been sealed pursuant to New York Criminal Procedure Law § 160.50, this office forwarded to plaintiff for execution a consent and authorization for the release of sealed arrest and criminal prosecution records. To date, the executed release has not been returned by plaintiff. Accordingly, at this juncture, defendants City and NYPD do not have access to the relevant records and are not prepared to have an informed position on discovery or settlement.

Additionally, while defendant City has not yet received requests for representation from the other individually named defendants (named in the complaint as "Deputy Inspector Barrere" and "Police Officer Jose Ortiz"), should these individual defendants be properly served with the complaint, defendant City would require time to investigate whether or not the Office of the Corporation Counsel may represent them. Representation of all the individually named defendants would significantly impact this office's position on both discovery and settlement.

Accordingly, defendants City and Kelly respectfully request an adjournment of the December 14, 2007 Initial Conference in this matter until a date and time after January 2, 2008 that is convenient to the Court as well as an extension of time to file a joint letter for the Initial Conference commensurate with the newly appointed date.

Thank you for your consideration herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Heim", is written over the typed name.

Douglas W. Heim (DH 5238)
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Cynthia Conti-Cook, Esq. (by fax)
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